IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 386 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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SANDEEP VIPINCHANDRA SHAH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VIRAT G POPAT for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
MR YN RAVANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 18/04/2007

CAV JUDGMENT

1. Heard learned Advocate Mr.S.V.Raju, Sr. Counsel for Mr. Virat G.Popat for the petitioner ,learned A.P.P. Mr. U.R.Bhatt for the respondent no.1 and learned Counsel Mr.Y.N. Ravani for the respondent no.2

2. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1 while learned Advocate Mr. Y.N.Ravani waives service for the respondent no.2.

3. The petitioners has preferred the present application under Section 482 of the Criminal Procedure Code, 1973 challenging the action of the respondent no.2 in not issuing the regular passport on

the ground of pending criminal prosecution vide letter dated 14-2-2006 produced at Annexure C" to the petition as well as for quashing and setting aside the order dated 20-1-2007 passed by the Metropolitan Magistrate Court no.5, Ahmedabad in Criminal Case no.689 of 2006 produced at Annexure D to the petition.

4. Before adverting to the arguments of learned Counsel for both the sides, it is necessary to state the brief facts of the case.:

4.1 In connection with an FIR being I CR no.59/2001 registered with Navrangpura Police Station, Ahmedabad, lodged against the petitioner, the petitioner had preferred Misc. Criminal Application no.4678 of 2001 for regular bail which was granted by this Court (Coram: D.P.Buch,J.) vide order dated 11-7-2001 by imposing certain conditions. After framing of the charges, since the offences for which the petitioner was charged were bailable, the petitioner preferred Criminal Misc. Application no.3947 of 2006 for deleting the conditions imposed vide the aforesaid order and this Court (Coram: K.S.Jhaveri,J.) vide order dt. 12-9-2006 allowed the application and deleted the conditions as the charges framed against the petitioner were for bailable offence, and as a result of this order of deleting conditions, the passport of the petitioner was handed over to him. However, as the validity of the passport had expired, the petitioner applied for issuance of a regular passport on 11-10-2006 to the Regional Passport Office, Ahmedabad- the respondent no.2 herein. Thereupon, the respondent no.2 vide letter dated 14-12-2006 called upon the petitioner to furnish permission

from the trial Court allowing the petitioner to travel abroad. Thereafter, the petitioner preferred Misc. Criminal Application no.689 of 2006 for issuance of necessary direction to the passport authority and the learned Metropolitan Magistrate, Court no.5, Ahmedabad vide order dated 20-1-2007 rejected the same. Hence, the present Criminal Misc. Application.

5. Mr. Raju, learned Counsel for the petitioner has vehemently argued that when the charge framed against the petitioner is in respect of bailable offences and when according to law for such offences no conditions can be imposed by the Court and the accused concerned has to be released on bail as the lawmakers have not put any restrictions on the accused against whom charge is framed for bailable offences, and hence, the respondent no.2 has no authority to ask the petitioner to furnish permission from the trial Court allowing the petitioner to travel abroad. According to the learned Counsel, the respondent no.2-authority ought to have straight away issued the passport to the petitioner if all other conditions under the provisions of the Passport Act are fulfilled by the petitioner.

6. As against that, it is the submision of learned Counsel Mr. Ravani for the respondent no.2-authority that there is a case registered against the present petitioner which is still pending before the trial Court. The learned Counsel further submitted that

the Ministry of External Affairs, Government of India, New Delhi, by its notification dated 25th August, 1993 has instructed the Regional Passport Office by a Circular that when there is a criminal case pending against any person, permission of the Court is a must for issuance of passport to such an applicant which is produced at Annexure R-1 to the petition. According to the learned Counsel, the said notification is in accordance with the provisions of Sec.6(2) of the Passport Act, and therefore, the letter dated 14-2-2006 of the respondent no.2 referred to above is in accordance with law.

7. The question that now crops up for determination by this Court is as to whether when a criminal case is pending against an applicant who has applied for the issuance of a passport is it necessary for such an applicant to obtain permission from the Court for allowing him to go abroad.? It is an admitted fact that criminal case is pending against the present pettioner before the Metropolitan Magistrate Court, Ahmedabad. In light of the notification referred to above and considering Section 6(2) of the Passport Act if any case is pending against an applicant who has applied for passport irrespective of whether the offence is bailable or non bailable, permission from the concerned Court is mandatory. Reference in this connection may be beneficially had to the decision rendered by this Court (Coram: P.B. Majmudar, J.) in the case of Dhiren Baxi v. Regional Passport Officer, Ahmedabad reported in 2003 Gujarat 108 wherein it has been observed that: " Where a citizen applies for a passport against whom a criminal case is

pending in a Court, the matter should not be decided merely bearing in mind the provisions of Sec.6, but the effect of the Notification issued by the Central Government also should be borne in mind and that the petitioner should approach the Magistrate with appropriate application for permitting him to go abroad for a particular time limit." The ratio of this judment applies with all force to the facts of the present case, and therefore, it is incumbent upon the petitioner to move before the Court against whom criminal case is pending against him for obtaining permission allowing him to go abroad. Nowhere in this judgment there is reference to the effect that only in case of non-bailable offence such permission is required from the concerned Court, but on the contrary the petitioner is required to furnish details of his travel abroad, namely, period of stay, period during which the petitioner intends to travel etc. The order of the trial Court also shows that the petitioner has also not produced such details.

8. This Court is, therefore of the view that this application is required to be rejected with liberty to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad for a particular period, on the basis of such order, the petitioner can request the Passport Authority to grant him passport for the period for which he is permitted to go abroad. Accordingly, it is directed

that the petitioner may approach the concerned Criminal Court with a prayer to permit him to go abroad providing necessary details as to time limit etc. and if any such application is preferred, the concerned Criminal Court may decide such application in accordance with law. If the concerned Criminal Court before the criminal case is pending, permits the petitioner to go abroad, the Passport Authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the Criminal Court and subject to the conditions laid down by the Notification referred to hereinabove. If any such application is made by the petitioner before the Magistrate, the Magistrate may decide the same in accordance with law and expeditiously within a period of two months from the date of receipt of such application from the petitioner.

9. Application is accordingly rejected. Rule is discharged.

(M.D.Shah,J.)

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